

AMENDED IN ASSEMBLY JUNE 12, 2003

AMENDED IN SENATE APRIL 2, 2003

AMENDED IN SENATE MARCH 24, 2003

AMENDED IN SENATE MARCH 19, 2003

**SENATE BILL**

**No. 158**

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**Introduced by Senator Alarcon**  
*(Coauthor: Assembly Member Koretz)*

February 11, 2003

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An act to add Chapter 4.6 (commencing with Section 1070) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 158, as amended, Alarcon. Displaced public transit employees.

Existing law provides for a system of labor standards enforcement administered by the Labor Commissioner.

This bill would establish a bidding preference for public transit service contractors and subcontractors who agree to retain, for a period of at least 90 days, certain employees who were employed to perform essentially the same services by the previous contractor or subcontractor. Contractors or subcontractors who agree to retain employees under the bill's provisions must offer employment to those employees except for reasonable and substantiated cause, as specified. This bill would provide that if a successor contractor or subcontractor determines that fewer employees are needed than under the prior contract, qualified employees shall be retained by seniority within the job classification. This bill would require the existing contractor, when required by the awarding authority, to provide employment information

relating to wage rates, benefits, dates of hire, and job classifications of employees under the existing service contract to the awarding authority or a successor contractor, as specified.

~~This bill would require the awarding authority to publish specified information in any initial bid package governed by its provisions, thereby imposing a state-mandated local program.~~

~~This bill would authorize an employee fired or not retained in violation of the bill's provisions, or his or her agent, to bring an enforcement action in a court of competent jurisdiction, as specified.~~

~~This bill would require the awarding agency to terminate the contract of any contractor or subcontractor who substantially breaches an agreement made pursuant to the bill's provisions. That terminated contractor or subcontractor would be ineligible to bid or be awarded a contract with that awarding authority for 1 to 3 years.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 4.6 (commencing with Section 1070) is  
2 added to Part 3 of Division 2 of the Labor Code, to read:

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4 CHAPTER 4.6. PUBLIC TRANSIT SERVICE CONTRACTS

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6 1070. The Legislature finds and declares all of the following:

7 (a) That when public transit agencies award contracts to  
8 operate bus and rail services to a new contractor, qualified  
9 employees of the prior contractor who are not reemployed by the



1 successor contractor face significant economic dislocation as a  
2 result.

3 (b) That those displaced employees rely unnecessarily upon the  
4 unemployment insurance system, public social services, and  
5 health programs, increasing costs to these vital government  
6 programs and placing a significant burden upon both the  
7 government and the taxpayers.

8 (c) That it serves an important social purpose to establish  
9 incentives for contractors who bid public transit services contracts  
10 to retain qualified employees of the prior contractor to perform the  
11 same or similar work.

12 1071. The following definitions apply throughout this  
13 chapter:

14 (a) “Awarding authority” means any local government  
15 agency, including any city, county, special district, transit district,  
16 joint powers authority, or nonprofit corporation that awards or  
17 otherwise enters into contracts for public transit services  
18 performed within the State of California.

19 (b) “Bidder” means any person who submits a bid to an  
20 awarding agency for a public transit service contract or  
21 subcontract.

22 (c) “Contractor” means any person who enters into a public  
23 transit service contract with an awarding authority.

24 (d) “Employee” means any person who works for a contractor  
25 or subcontractor under a contract. “Employee” does not include  
26 an executive, administrative, or professional employee exempt  
27 from the payment of overtime compensation within the meaning  
28 of subdivision (a) of Section 515 or any person who is not an  
29 “employee” as defined under Section 2(3) of the National Labor  
30 Relations Act (29 U.S.C. Sec. 152(3)).

31 (e) “Person” means any individual, proprietorship,  
32 partnership, joint venture, corporation, limited liability company,  
33 trust, association, or other entity that may employ individuals or  
34 enter into contracts.

35 (f) “Public transit services” means the provision of passenger  
36 transportation services to the general public, including paratransit  
37 service.

38 (g) “Service contract” means any contract the principal  
39 purpose of which is to provide public transit services through the  
40 use of service employees.

(h) “Subcontractor” means any person who is not an employee who enters into a contract with a contractor to assist the contractor in performing a service contract.

1072. (a) A bidder shall declare as part of the bid for a service contract whether or not he or she will retain the employees of the prior contractor or subcontractor for a period of not less than 90 days.

(b) An awarding authority letting a service contract out to bid shall give a 10 percent preference to any bidder who agrees to retain the employees of the prior contractor or subcontractor pursuant to subdivision (a).

~~(c) (1) Prior to letting a service contract out to bid, the awarding authority shall require the existing service contractor to provide~~

*(c) (1) If the awarding authority announces that it intends to let a service contract out to bid, the existing service contractor, within a reasonable time, shall provide to the awarding authority the number of employees who are performing services under the service contract and the wage rates, benefits, and job classifications of those employees. The existing service contractor shall provide this information within a reasonable time of the request. The awarding authority shall publish, as part of the initial bid package for a successor service contract, the applicable wage rates, benefit levels, dates of hire, and job classifications of employees who will perform services under the service contract. In addition, the existing service contractor shall make this information available to any entity that the awarding authority has identified as a bona fide bidder. If the successor service contract is awarded to a new contractor, the existing contractor shall provide the names, addresses, dates of hire, wages, benefit levels, and job classifications of employees to the successor contractor. The duties imposed by this subdivision shall be contained in all service contracts.*

(2) A successor contractor or subcontractor who agrees to retain employees pursuant to subdivision (a) shall retain employees who have been employed by the prior contractor or subcontractors, except for reasonable and substantiated cause. That cause is limited to the particular employee’s performance or conduct while working under the prior contract or the employee’s failure of any controlled substances and alcohol test, physical

1 examination, criminal background check required by law as a  
2 condition of employment, or other standard hiring qualification  
3 lawfully required by the successor contractor or subcontractor.  
4 ~~This requirement shall be stated by an awarding authority in any~~  
5 ~~initial bid package governed by this chapter.~~

6 (3) The successor contractor or subcontractor shall make a  
7 written offer of employment to each employee to be rehired. That  
8 offer shall state the time within which the employee must accept  
9 that offer, but in no case less than 10 days. Nothing in this section  
10 requires the successor contractor or subcontractor to pay the same  
11 wages or offer the same benefits provided by the prior contractor  
12 or subcontractor.

13 (4) If, at any time, the successor contractor or subcontractor  
14 determines that fewer employees are required than were required  
15 under the prior contract or subcontract, he or she shall retain  
16 qualified employees by seniority within the job classification. In  
17 determining those employees who are qualified, the successor  
18 contractor or subcontractor may require an employee to possess  
19 any license that is required by law to operate the equipment that  
20 the employee will operate as an employee of the successor  
21 contractor or subcontractor.

22 1073. (a) An employee who was not offered employment or  
23 who has been discharged in violation of this chapter, or his or her  
24 agent, may bring an action against the successor contractor or  
25 subcontractor in any superior court having jurisdiction over the  
26 successor contractor or subcontractor. Upon finding a violation of  
27 this chapter, the court shall order reinstatement to employment  
28 with the successor contractor or subcontractor and award backpay,  
29 including the value of benefits, for each day of violation. A  
30 violation of this chapter continues for each day that the successor  
31 contractor or subcontractor fails to employ the employee, within  
32 the period agreed to pursuant to Section 1072.

33 (b) The court may preliminarily or permanently enjoin the  
34 continued violation of this chapter.

35 (c) If the employee prevails in an action brought under this  
36 chapter, the court shall award the employee reasonable attorney's  
37 fees and costs as part of the costs recoverable.

38 1074. (a) Upon its own motion or upon the request of any  
39 member of the public, an awarding authority ~~shall~~ may terminate  
40 any service contract made pursuant to Section 1072 ~~that is~~

~~substantially breached by a contractor or subcontractor. Within 30 days of receipt of a request pursuant to this section, the awarding authority shall hold a public hearing to decide whether to terminate the service contract. if both of the following occur:~~

~~(1) The contractor or subcontractor has substantially breached the contract.~~

~~(2) The awarding authority holds a public hearing within 30 days of the receipt of the request or its announcement of its intention to terminate.~~

~~(b) A contractor or subcontractor terminated pursuant to subdivision (a) shall be ineligible to bid on or be awarded a service contract or subcontract with that awarding authority for a period of not less than one year and not more than three years, to be determined by the awarding authority.~~

~~SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.~~